BEH TUCK SENG v. REX.

[Appellate Criminal Jurisdiction (Murray-Aynsley, C.J) June 17, 1947]

Penal Code, Sections 383 and 384 — Extortion — Ingredients of offence.

In this case the appellant appealed against his conviction under Section 384 of the Penal Code. The facts were shortly as follows: The appellant approached the complainant and said he wanted to collect $10.80 for expenses. He said further "everyone here has joined, what about you?". The Complainant, who was a stall holder, took this as a threat and feared that if he did not pay he would be beaten or his stall upset. He therefore paid over a sum of money. There was no suggestion that the appellant had any business to collect any money from the complainant.

Held, that on the facts there was sufficient evidence on which to convict the appellant.

MAGISTRATE'S APPEAL.

S. C. Goho for the Appellant.

C. H. Butterfield (D.P.P.) for the Respondent.

Murray-Aynsley, C. J. : — In this case the appellant approached the complainant and said he wanted to collect $10.80 for expenses. He said further "everyone here has joined, what about you?" The complainant, who was a stall-holder, took this as a threat and feared that if he did not pay he would be beaten or his stall upset. He, therefore, paid over a sum of money. There is no suggestion that the appellant had any business to collect any money from the complainant.

The appellant was convicted under section 384, Penal Code.

The question is whether there was sufficient evidence on which to convict the appellant. Extortion is defined in section 383 of the Penal Code which reads :—

> Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion."

All that is necessary under the section is that a person should be intentionally put in fear of any injury and should be thereby dishonestly induced to deliver any property or valuable security.

In this case it is clear that the complainant was put in fear and that he was induced thereby to hand over money.

The whole question therefore turns on whether this was done "intentionally" and "dishonestly".

To anyone with any knowledge of the habits of extortioners the whole transaction has a very familiar sound and it is not surprising that the complainant put upon it the construction that he did. The learned District Judge thought the same about it, and I think one would have to be ingenuous to think otherwise.

I don't find any substance in any of the other objections raised.

The sentence is not excessive. The appeal must be dismissed.

Appeal Dismissed.

R. J. SNEDDON v. A. G. SHAFE.

[Original Civil Jurisdiction (Brown, J.) May 16, 1947]

Custodian of Property Proclamation of Malayan Union Section 10 — Sale of motor car by Custodian of Property Penang — Validity of Sale — Law applicable — Rules of the Supreme Court, Order 33.

The facts in this case were shortly as follows: On the 15th of February 1942 the plaintiff was the owner of a Chrysler Saloon car. No evidence was available regarding its use from the 15th February 1942 to the 18th October 1945, but it was agreed that it was then taken over by the Japanese. From the 18th October 1945 to the 10th April 1946 it was used in Penang by the B.M.A. (Rubber Buying Unit). On the 11th April 1946 the Custodian of Property, Penang, acting (or purporting to act) under Section 10 of the Custodian of Property Proclamation of the Malayan Union, sold the car to the defendant in Penang. On the 17th April 1946 the defendant brought it from Penang to Singapore and the car was registered in Singapore. The plaintiff returned to Singapore on the 5th September 1945 and claimed the return of the motor car and damages for its detention. Section 10 of the Custodian of Property Proclamation in the Malayan Union read as follows: "When any property taken into custody by the Custodian is perishable or liable to waste or deteriorate if kept or kept untenanted, the Custodian may sell the same and retain custody of the proceeds pending directions as to their disposal, or may execute on behalf of the owner leases or tenancy agreements at such rents, upon such conditions and for such terms as the Custodian may think fit." On the 10th October 1946 (that is after the sale of the car in question in this case) the following sub-section was added by amendment: "(2) Any sale by the Custodian purporting to be in exercise of the power of sale conferred upon him by sub-section (1) which has taken place since this Proclamation came into force or which shall hereafter take place, shall be deemed to be a valid sale and shall not be called into question in any Court." The following questions of law were raised for the opinion of the Court under the special case procedure provided by Order 33:

(1) (a) whether in view of the Custodian of Property Proclamation of the Malayan Union and its Statutory modifications the Court can take cognisance of the claim of the Plaintiff; (b) if so, whether the Court must hold that there was a valid sale to the defendant by reason of the Custodian of Property Proclamation Section 10, subsection 2; (2) whether the Custodian of Property, Penang, had any power to sell the motor car; (3) whether the Custodian of Property, Penang, made a valid sale of the motor car to the defendant under which he became owner; (4) if the defendant's title is not absolute whether the plaintiff is entitled to an order for delivery up of the car; (5) if the defendant's title is

not absolute on what principles are damages (if any) and compensation (if any) to be assessed and awarded.

Held, (1) that the law to be applied in this case is the law of the Malayan Union at the time of the transfer by the Custodian of Property, Penang; (2) that a motor car is liable to deteriorate if kept unused and therefore it falls within section 10 (1) of the Custodian of Property Proclamation and the Custodian of Property, Penang, had the power to sell the motor car in question in this case; (3) that the Custodian of Property, Penang, made a valid sale of the motor car to the defendant, under which he became the owner.

Cases referred to :—

(1) *Carr v. Fracis Times & Co.* (1902) A.C. 176.

(2) *Phillips v. Eyre* 6 L.R. Q.B. 1.

(3) *Buckler v. Wilson* (1896) Q.B. 83.

CIVIL SUIT.

Dr. Withers-Payne for the Plaintiff.

G. M. Coltart for the Defendant.

Brown, J. : — In this case the facts are not in dispute. The parties, both of whom come to this Court "with clean hands" (to adopt an expression which was used in the course of the argument) and one of whom must be the innocent victim of circumstances, have raised certain questions of law for the opinion of the Court under the Special Case procedure provided by Order 33.

The facts are that on the 15th February 1942 the plaintiff was the owner of a Chrysler Saloon car. No information is available regarding its use from the 15th February 1942 to the 18th October 1945, but it is agreed that it is fair assumption that it was taken over by the Japanese. From the 18th October 1945 to the 10th April 1946 it was used in Penang by the B.M.A. (Rubber Buying Unit). On the 11th April 1946 the Custodian of Property, Penang, acting (or purporting to act) under section 10 of the Custodian of Property Proclamation of the Malayan Union, sold the car to the defendant in Penang. On the 17th April 1946 the defendant brought it from Penang to Singapore, in which territory it is now registered. The plaintiff returned to Singapore on the 5th September, 1945, where he has since resided. The plaintiff now claims the return of the motor-car and damages for its detention.

Section 10 of the Custodian of Property Proclamation in the Malayan Union, which is dated the 26th September 1945, read as follows :—

> When any property taken into custody by the Custodian is perishable or liable to waste or deteriorate if kept or kept untenanted, the Custodian may sell the same and retain custody of the proceeds pending directions as to their disposal, or may execute on behalf of the owner leases or tenancy agreements at such rents, upon such conditions and for such terms as the Custodian may think fit.

It was hardly to be supposed that in every case where the Custodian purported to exercise his power under that section, the validity of his action might not be called in question upon the ground that he acted outside the limited power which the section confers upon him. And on the 10th October 1946 by G.N. 2569 — 6 months after the Custodian, in the purported exercise of his power of sale, had delivered this car to the defendant in Penang, and 5 months and 3 weeks after the defendant had brought the car to Singapore out of the jurisdiction of the Malayan Union — the Governor of the Malayan Union, in the purported exercise of the power which he, as the legislating authority of the Malayan Union, had conferred upon himself by section 18 of the Transfer of Powers and Interpretation Ordinance, 1946, amended (or purported to amend) section 10 of the Custodian of Property Proclamation by adding the following sub-section :—

> (2) Any sale by the Custodian purporting to be in exercise of the power of sale conferred upon him by sub-section (1) which has taken place since the date when this Proclamation came into force or which shall hereafter take place, shall be deemed to be a valid sale and shall not be called into question in any Court.

The questions which are raised for the opinion of the Court in the Special Case are :—

1. (a) Whether in view of the Custodian of Property Proclamation of the Malayan Union and its Statutory Modifications the Court can take cognizance of the claim of the Plaintiff.

   (b) If so, whether the Court must hold that there was a valid sale to the Defendant by reason of the Custodian of Property Proclamation section 10 subsection 2.

2. Whether the Custodian of Property, Penang, had any Power to sell the Motor Car.

3. Whether the Custodian of Property, Penang, made a valid sale of the motor car to the Defendant under which he became the owner.

4. If the defendant's title is not absolute whether the plaintiff is entitled to an Order for delivery up of the car.

5. If the defendant's title is not absolute on what principles are damages (if any) and compensation (if any) to be assessed and awarded.

Question 1 (a). Clearly the legislating authority in the Malayan Union has no jurisdiction to make

laws for the Colony of Singapore; and the above-quoted amendment is not the law of Singapore. There is nothing in the Custodian of Property Proclamation of the Malayan Union and its statutory modifications which can preclude this Court from taking cognizance of the Plaintiff's claim.

Question 1 (b). The plaintiff is suing in tort. The defendant says that the tort (if it was a tort) was committed in Penang on the 11th April 1946. And Mr. Coltart, on behalf of the defendant, has quoted the case of *Carr v. Fracis Times & Co.*[1] with a view to establishing the proposition that in order to found an action in Singapore for a wrong committed in the Malayan Union it must be shewn that the act was not justifiable by the law of the Malayan Union. Whether or not it was justifiable by the law of the Malayan Union must depend upon the question of whether the Custodian in Penang had the power to sell the car to the defendant and thereby to convey a good title. But Mr. Coltart says that even upon the assumption that on 11th April 1946 the Custodian had no such power and the defendant committed a tort in acquiring the car without title, that has now been rectified by the *ex post facto* amendment. And he relies on the case of *Phillips v. Eyre*[2] and particularly at p. 29 as shewing that where an act was committed in a foreign country which was wrongful by the law of that country at the time when it was committed, but the legislature of that country, by retrospective enactment, has subsequently declared it to be lawful, no action will lie here in respect of it.

But the plaintiff says that whether on 11th April 1946 a tort was or was not committed in the Malayan Union is immaterial, although if it was a tort it continued till the defendant's arrival with the car in Singapore, and has continued (in Singapore) since. He relies on the tort which was committed in Singapore. In this way he distinguishes this case from *Phillips v. Eyre,* which he says can have no application because in that case the wrongful acts were committed abroad.

It cannot, I think, be disputed that if a tort was committed in the Malayan Union it continued until the defendant's arrival in Singapore, and the plaintiff is entitled to base his claim on the tort which was committed in Singapore. In so doing I think he has succeeded in circumventing the difficulties which he would otherwise have encountered from *Phillips v. Eyre.* But the question of whether or not a tort was committed in Singapore seems to me to be dependent on the same question as the question of whether or not a tort was committed in the Malayan Union, namely: had the Custodian in Penang on 11th of April 1946 the contractual capacity to sell this car to the defendant and to give him a good title?

It is agreed that this being a contractual question it is to the law of the Malayan Union that we must look. But Mr. Coltart says that we must apply the law of the Malayan Union as it is to-day, which includes the amendment contained in G.N. 2569 dated 10th October, 1946. As I understand the argument it is this :—

The tort (if it was a tort) was committed in Penang on the 11th April, 1946, and has continued until to-day. What has happened in the interval is no more than a continuation of the act (whether rightful or wrongful) which was committed on 11th April in the Union. If that act was tortious, its continuation must be tortious. If it was non-tortious, or if it is now deemed to have been non-tortious, its continuation cannot be tortious. As it began or is deemed to have begun, so it has continued or must be deemed to have continued. Therefore the whole searchlight must be directed on the transaction of 11th April in Penang, in order to see whether by the law of the Malayan Union, the defendant acquired (or is in law to be deemed to have acquired) a good title from it. And by the law of the Malayan Union that transaction is now deemed to be valid (whatever it may have been at the time), and the defendant is now deemed to have acquired a good title on that day.

In reply to that Dr Withers Payne re-emphasizes that he is not concerned with any tort which the defendant may have committed before he arrived in Singapore on the 17th of April, 1946. The searchlight, he says, is to be concentrated on the 17th of April and since. If the defendant had no title when he arrived in Singapore on the 17th of April, he committed a tort then (in Singapore) and he has continued to commit the tort (in Singapore) since. And he says that the *ex post facto* amendment in the Malayan Union cannot affect the rightfulness or the wrongfulness of being in possession of the car in Singapore from and after the 17th of April. He agrees that the question of whether the defendant came to Singapore with a good title must depend upon the contractual question of whether the Custodian had the contractual capacity to give him a good title on 11th of April in Penang. And he agrees that in determining that question it is to the law of the Malayan Union that we must look. But he contends that it is the law of the Malayan Union as it was on the 11th of April 1946 which alone is applicable. And in support of this contention he has referred to Rule 152 at page

608 of *Dicey's* Conflict of Laws (5th Edition) which reads as follows :—

> A transfer of a moveable....., giving a good title thereto according to the law of the country where the moveable is situate at the time of the transfer.....is valid.

I am prepared to decide Question 1 (b) upon that ground alone. In my opinion, in this case it is the law of the Malayan Union at the time of the transfer that is to be applied. If the Custodian was not competent to give a valid title in Penang according to the law of the Malayan Union as it was on the 11th of April, the defendant came to Singapore without a valid title. Thereby he committed a tort. Since his arrival in Singapore the legislating authority of the Malayan Union has enacted a law which purports to deem as valid (retrospectively) that which may have been invalid on 11th April 1946. But the parties in Singapore are outside the jurisdiction of that law. If the defendant came here without a valid title, nothing has transpired (which is applicable to him) to give him a valid title now.

But there is another ground which would bring me to the same conclusion. If the existing law of the Malayan Union is to be applied, as Mr. Coltart contends, the amendment only has the effect of deeming to be valid, in the Malayan Union, that which may have been invalid on the 11th April. It does not, and cannot in my opinion, have the effect of making valid on that day something which was invalid on that day. And if the purported sale was invalid on the 11th April, the defendant left the Malayan Union before the enactment of the legislation which purports to establish the fiction that it was valid, and the inapplicability of the amendment to him equally applies.

The answer to Question 1 (b) is therefore in my opinion in the negative. On behalf of the plaintiff it was also argued that the amendment was *ultra vires* and therefore is not the law of the Malayan Union. With regard to that I will only say that I do not feel called upon to decide that the law of another country is *ultra vires,* unless such a decision were necessary to my judgment in this case. It is not so necessary. I may add that my reluctance to express an opinion upon the matter, unless my task necessitates it, is all the greater as I am given to understand that it is shortly to come up for decision in the Courts of the country whose law it purports to be.

Question 2. I now proceed to the consideration of Question 2 in the Special Case: whether the Custodian had any power to sell the motor-car.

Section 10 (1) of the Proclamation says that the Custodian may sell property which is "perishable or liable to waste or deteriorate if kept or kept untenanted". On behalf of the plaintiff it is argued that the Custodian is here empowered to sell, not four classes of property, but two, namely — (1) movables which are "perishable"; (2) immovable property which is "liable to waste or deteriorate if kept or kept untenanted". The argument is that although four expressions are used — (1) "perishable"; (2) "liable to waste"; (3) liable to "deteriorate if kept"; (4) liable to "deteriorate if kept untenanted" — the juxtaposition of "deteriorate if kept" between "waste" and "kept untenanted" shews that "deteriorate if kept" must apply to immovable property. The draughtsman has dealt first with movable property by the word "perishable". He then proceeds to deal with immovable property by the word "waste" — a term which Mr. Coltart concedes must be given its technical meaning. And at the end he deals with immovable property by the expression "kept untenanted". He would hardly (this is the argument) go back in his third expression to movable property and thus sandwich the expression "deteriorate if kept", applying to movables, in between two expressions dealing with immovable property. If he had intended it to apply to movables he would have put it after "perishable" and before "waste". Thus he would have had his two expressions covering movable property, followed by his two expressions covering immovable property.

The difficulty which I find in accepting that argument is that if "liable to deteriorate if kept" is not to cover some classes of movables, no provision is made for the sale of any movables except that limited class which is covered by the word "perishable". The case of *Buckler v. Wilson*[3] was referred to. In that case it appears that margarine was found as a fact by the justices not to be a "perishable" article within the meaning of section 10 of the Sale of Food and Drugs Act Amendment Act 1879. I cannot say whether, if evidence was taken, margarine would be found as a fact not to be a "perishable" article within the meaning of section 10 (1) of the Custodian of Property Proclamation in the Malayan Union. But no one will dispute that there are many classes of movables which fall short of being "perishables" like fish or fruit, but which are nevertheless liable to deteriorate if kept. And when I consider this Proclamation as a whole I cannot think that the Custodian, who is given power to sell a house which is liable to deteriorate if kept untenanted, is given no power to sell movables falling short of perishables" but which are liable to deteriorate if kept. One of the expressed objects of this Proclamation is to define the

duties of the Custodian. "Property" is defined as meaning movable or immovable property. And section 9 sets out the Custodian's duties with regard to the personal effects of absentee owners. He is to take such steps as may be "reasonably practicable" to safeguard them. But if it is not reasonably practical to safeguard them, section 10 (1) gives him power to safeguard the interests of the owner by converting his property into money. If section 10 (1) is to bear the limited construction for which the plaintiff contends, then no provision exists for safeguarding the interests of an owner whose movable property, falling short of 'perishable', is of such a character that it is impracticable to keep it because, if kept, it is liable to deteriorate. Such a construction would, in my view, defeat part of the purpose of this Proclamation. And if, without doing violence to the language of section 10 (1), I can so construe it as to give effect to the purpose, I must do so. I hold that the words "liable to deteriorate if kept" must be given their ordinary meaning and that they cover certain classes of movables. I also hold that a motor-car is not covered by the word "perishable".

Now no doubt almost anything is liable to deteriorate if kept for a sufficiently long time and under sufficiently adverse conditions. But, as Mr. Coltart has said, between the class of article which falls just short of being "perishable" and an article, like a diamond, which will hardly deteriorate if kept for an almost indefinite period of time, there is a very wide range. And at some point on that range I have to draw the line within which those classes of movables will fall which are covered by the expression "liable to deteriorate if kept" as it is used in this section. But it is impossible even to begin to ascertain where the line is to be drawn without first considering the two questions: "kept for how long?" and "kept under what conditions?"

Now with regard to the first question, it seems to me than if the plaintiff's contention is correct and a motor-car does not fall within the scope of this section, then (unless or until the owner claims it) it must be kept for as long as this legislation lasts or until some subsidiary legislation, or some amendment, is enacted empowering the Custodian to dispose of it. As a fact, this legislation has now been in operation for 18 months, and no such subsidiary legislation or amendment has been made.

In considering the question "kept under what conditions?", again regard must be had to the object of this Proclamation. It is to define the duties of the Custodian of Property in a tropical country under post-war conditions, which include a shortage of man-power, a shortage of buildings, a shortage of materials, and an abundance of pilfering and theft. Under such conditions he is required by section 9 "to take such steps as may be reasonably practical" to safeguard the personal effects of absentee owners. Therefore I think that the answer to the question 'kept under what conditions?" must be "kept under such conditions as a Custodian of Property, in the circumstances obtaining in the Malayan Union, may reasonably be expected to provide, for the proper safeguarding of the property, with the staff and other facilities which he may reasonably be expected to have".

Now it is common knowledge that a motor-car, if kept unused, requires certain attentions if it is not to deteriorate. To begin with, it must be jacked up and the tyres removed. From time to time the engine must be turned over. From time to time the body-work and upholstery must receive attention. And at all times, in the Malaya of to-day, provision must be made against deterioration through the pilfering of parts by thieves. I cannot think that the Custodian can be expected to provide the staff and facilities which would be necessary in order to prevent all the cars which are in his custody from deteriorating, in a tropical climate and in the circumstances existing to-day. It may be that he could provide the necessary facilities for some. It may be that a motor-car, if kept by the Custodian, will not *necessarily* deteriorate. But the word used in this section is "liable". And I am quite unable to hold that a motor-car, if kept by the Custodian for such period as he may be required under this Proclamation to keep it, and under such conditions as he may reasonably be expected to provide with the staff and other facilities which he may reasonably be expected to have, is not *liable* to deteriorate.

In my opinion, therefore, a motor-car falls within section 10 (1) of the Proclamation, and the answer to Question 2 is that the Custodian of Property, Penang, had the power to sell this motor-car.

Question 3. Having the power to sell the motor-car, the Custodian of Property, Penang, made a valid sale of the motor-car to the defendant, under which he became the owner.

The remaining two questions do not therefore arise. And, in accordance with the penultimate paragraph in the Special Case, there must be judgment for the defendant "with his costs of defence when taxed".

Order Accordingly.